

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:19-cv-00348-MR
[CRIMINAL CASE NO. 1:17-cr-00036-MR-WCM]**

ALAN PETER DARCY,)
Petitioner,)
vs.) **O R D E R**
UNITED STATES OF AMERICA,)
Respondent.)
_____)

THIS MATTER is before the Court on the Petitioner's Motion for Reconsideration [Doc. 21].

The Petitioner, through counsel, moves the Court to reconsider its Text-Only Order entered on June 29, 2020, allowing the Government to file a sur-reply in this matter. [Doc. 21]. As grounds for reconsideration, the Petitioner argues that he was not afforded the opportunity to file a response to the motion regarding the sur-reply, and that allowing the Government to file such sur-reply would be "unfair and highly prejudicial to the petitioner." [Doc. 21 at 2].

Reviewing the history of this case to date, however, reveals that the Petitioner has litigated this matter in a way that has been unfair and

prejudicial to the Government. The Petitioner initially filed this § 2255 action in December 2019. While the motion to vacate was already supported by a 20-page brief, the Petitioner’s counsel admittedly intended to file a more detailed brief later *in reply* to the Government’s anticipated response. [See Doc. 12 at 1]. When the Petitioner finally filed his reply brief, it was 35 pages in length and supported by two affidavits.¹ [Doc. 17].

The Government was thus confronted with a reply brief that was in excess of the page limit prescribed by the Court’s Local Rules; that presented entirely new arguments for relief; and that was supported by affidavits to which the Government had no opportunity to respond. Rather than strike the Petitioner’s improper reply, the Court permitted the Government an opportunity to file a sur-reply. While sur-replies are generally disfavored in this Court, the Petitioner’s actions warranted the granting of a limited sur-reply in this instance.

IT IS, THEREFORE, ORDERED that the Petitioner’s Motion for Reconsideration [Doc. 21] is **DENIED**.

¹ The Petitioner was granted multiple extensions of time to file his reply brief. [See Text-Only Order entered March 20, 2020; Doc. 13; Text-Only Order entered May 27, 2020; Text-Only Order entered June 9, 2020]. Additionally, the Petitioner was granted additional time to file an executed version of his own affidavit [Text-Only Order entered June 29, 2020], which affidavit was filed on July 8, 2020 [Doc. 22].

IT IS SO ORDERED.

Signed: July 8, 2020



Martin Reidinger
Chief United States District Judge

